

# **MTC EXHIBIT “F”**

Videotaped Deposition of Dentin Chapman

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

CALEB BUTLER and JEREMY )  
PENNINGTON, )  
Plaintiffs, )  
VS. ) Case No. 1:22-CV-00367  
BNSF RAILWAY COMPANY, )  
Defendant. )

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ORAL AND VIDEOTAPED DEPOSITION OF  
DENTIN CHAPMAN  
JUNE 28, 2023  
(REPORTED REMOTELY)  
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ORAL AND VIDEOTAPED DEPOSITION OF DENTIN CHAPMAN,  
produced as a witness at the instance of the Plaintiff,  
and duly sworn, was taken in the above-styled and  
numbered cause on June 28, 2023, from 10:02 a.m. to  
10:20 a.m., before Donna Wright, CSR in and for the  
State of Texas, reported by machine shorthand and  
remotely via Zoom, pursuant to the Federal Rules of  
Civil Procedure, the 22nd Emergency Order Regarding the  
COVID-19 State of Disaster, and any stipulations or  
agreements stated on the record or attached hereto.

## Videotaped Deposition of Dentin Chapman

<p>1 just described, occurred on August 19th, right?</p> <p>2 A. That's -- that's correct.</p> <p>3 Q. All right. And so on the 19th, you had</p> <p>4 instructed Mr. Nesteby to remove those locomotives from</p> <p>5 service?</p> <p>6 A. Yes, following -- yes, when he had called me I</p> <p>7 told him to -- to do that until mechanical had cleared</p> <p>8 the locomotives.</p> <p>9 Q. When was your next involvement with -- with</p> <p>10 this hard coupling event and Caleb Butler's injury?</p> <p>11 A. So I asked Mr. Nesteby to please write an</p> <p>12 e-mail to me so obviously we had a documentation of the</p> <p>13 conversation he and Mr. Butler had, and to please</p> <p>14 include the statement because I was obviously not</p> <p>15 physically there with Mr. Nesteby, so to please send</p> <p>16 that to me so I could see the statement.</p> <p>17 The next involvement would have just been</p> <p>18 through conversations and e-mail chains in the</p> <p>19 following days as mechanical would have responded and</p> <p>20 let me know what they had found, that they were</p> <p>21 releasing the locomotive.</p> <p>22 And then obviously continuing to look</p> <p>23 into a follow-up conversation with Mr. Nesteby, had he</p> <p>24 heard from Mr. Butler. I think it was on a Thursday,</p> <p>25 and so we were going into a weekend and I know</p>	<p>12 those locomotives from service?</p> <p>2 A. Yeah, so he would -- he would obviously make</p> <p>3 sure they were physically in the roundhouse. They</p> <p>4 would want to make sure that it is obviously on their</p> <p>5 turnover, mechanical has it. Those locomotives could</p> <p>6 not be used until inspected. That would need to be a</p> <p>7 formal briefing as well that he would have with -- with</p> <p>8 his -- during his turnover and that the team was aware</p> <p>9 those locomotives don't go back into service until</p> <p>10 mechanical clears them.</p> <p>11 Q. Would Mr. Nesteby need to complete a document</p> <p>12 to remove those locomotives from service or would he</p> <p>13 just need to have a conversation?</p> <p>14 A. Just need to have a conversation. I had</p> <p>15 included -- Mr. McGuire, I had included -- I don't</p> <p>16 recall the date of the inclusion, but I included the</p> <p>17 mechanical supervisor that oversaw Silsbee Yard and</p> <p>18 Lafayette Yard in that communication to make sure he</p> <p>19 was also aware and Mr. Nesteby was aware that those</p> <p>20 locomotives were not to come back in service.</p> <p>21 Q. When you say you included, what do you mean by</p> <p>22 that?</p> <p>23 A. I believe I included him in the e-mail -- I</p> <p>24 believe I included him in the e-mail response,</p> <p>25 Mr. Trailer, in the e-mail response to make sure he was</p>
<p>11 Mr. Butler was on his off days. So, you know, how was</p> <p>2 Mr. Butler feeling, et cetera. And it would have just</p> <p>3 been lead-up -- follow-up conversations from that point</p> <p>4 on as everything continued to progress.</p> <p>5 Q. So you had a discussion with Mr. Nesteby and</p> <p>6 asked him to e-mail you a copy of the statement that</p> <p>7 Mr. Nesteby had completed that we looked at, Exhibit</p> <p>8 No. 2?</p> <p>9 A. I think I had told him -- yeah, I told him via</p> <p>10 phone to send me an e-mail and to include the statement</p> <p>11 as part of that e-mail, yes.</p> <p>12 Q. Did -- did Mr. Nesteby do that?</p> <p>13 A. Yes, he did.</p> <p>14 Q. All right. Did you do anything else on -- and</p> <p>15 did he do that on the 19th?</p> <p>16 A. I don't recall the exact date of his e-mail,</p> <p>17 so I believe he did, yes, on that -- on that date an</p> <p>18 initial kind of instant response.</p> <p>19 Q. Did you do anything else on August 19th other</p> <p>20 than having this discussion with Mr. Nesteby?</p> <p>21 A. No. Giving him the instruction to take the</p> <p>22 locomotive out of service, that would have been --</p> <p>23 would have been it at that point.</p> <p>24 Q. Where could we look to see -- what would</p> <p>25 Mr. Nesteby need to do at that point in time to remove</p>	<p>13 aware of it.</p> <p>2 MR. MCGUIRE: Susan, do you know where</p> <p>3 those e-mails are at?</p> <p>4 MS. TRAVIS: I know where some of them</p> <p>5 are. And, counsel, they include -- and I was going to</p> <p>6 have a conversation with you about this and I'm very</p> <p>7 sorry.</p> <p>8 They include the claims department in</p> <p>9 connection with investigating Mr. Butler's injury. And</p> <p>10 some of them -- here's the conversation I was going to</p> <p>11 have with you. Some of them, while they include the</p> <p>12 claims department, are factual in nature and I'm happy</p> <p>13 to produce those because I feel like if it's factual,</p> <p>14 that could -- that's discoverable.</p> <p>15 But I don't want that to be considered by</p> <p>16 you a waiver of all communications with the claims</p> <p>17 department because there is an investigative privilege.</p> <p>18 And so I didn't know where you would stand on that.</p> <p>19 MR. MCGUIRE: Well, obviously I'm going</p> <p>20 to need those documents to be able to question him</p> <p>21 about them because I literally just got the e-mails two</p> <p>22 days ago where -- from September 28th from a</p> <p>23 decisionmaker in the case discussing the -- his</p> <p>24 investigation of what happened. And I just got those.</p> <p>25 And to learn that there's more e-mails, I</p>

## Videotaped Deposition of Dentin Chapman

<p>14</p> <p>1 mean, I need these to be able to question all of the</p> <p>2 witnesses. So do you have -- I mean, and obviously you</p> <p>3 guys have redacted portions that you thought that I</p> <p>4 didn't need to see.</p> <p>5 So I guess what I want to be able to do</p> <p>6 is go through those documents so that I can read those</p> <p>7 to be able to -- to question him about those.</p> <p>8 MS. TRAVIS: Sure, I understand. I mean,</p> <p>9 we have been, you know, taking a lot of depositions and</p> <p>10 it's -- it's been a lot.</p> <p>11 I'll handle this however you want. If</p> <p>12 you want to stop taking his deposition right now today</p> <p>13 and reschedule it, we can do that. If you want me to</p> <p>14 find the Will Trailer one right now, we can take a</p> <p>15 ten-minute break and I'll redact the stuff.</p> <p>16 I did not -- I don't want to produce</p> <p>17 something that I think is arguably protected by the</p> <p>18 investigative privilege. But there -- that's a --</p> <p>19 that's a broad -- that's a gray area.</p> <p>20 There's some of them that are -- it's</p> <p>21 just factual and I have no objection to producing that.</p> <p>22 But the claims people are copied on it and I don't want</p> <p>23 you to consider that a waiver of all other e-mails.</p> <p>24 And, you know, other e-mails that I feel</p> <p>25 like are protected by the privilege, I'm doing a</p>	<p>16</p> <p>1 MR. MCGUIRE: Yeah. I mean, all that I'm</p> <p>2 getting it at is if -- I just want all of the</p> <p>3 documents. For example, I did not have the document to</p> <p>4 be able to question Janssen Thompson about some of</p> <p>5 these things that we know now that he knew and the same</p> <p>6 with Chad Nesteby.</p> <p>7 And it just -- you know, from my</p> <p>8 perspective, like the document that was just produced</p> <p>9 for Mr. -- for Mr. Chapman here, that document -- this</p> <p>10 is a decisionmaker. Of all of the documents we would</p> <p>11 think that we would get in this case, it would be</p> <p>12 e-mails from him discussing the hard coupling.</p> <p>13 There's no -- you know, no claim of any</p> <p>14 type of privilege with regard to that document and I</p> <p>15 just got it. And that -- I guess that's the issue that</p> <p>16 I'm having is it just seems like it's just drip, drip,</p> <p>17 dripping. And I want to make sure I have everything so</p> <p>18 that I don't have to come back and take these things</p> <p>19 again. I mean, I'm happy --</p> <p>20 MS. TRAVIS: I agree, Clint. You tell me</p> <p>21 what you want to do. I mean, I agree. And, like I</p> <p>22 said, I'm sorry. I'm doing the best I can. I'm trying</p> <p>23 to, you know, hamster on the wheel and keep up the best</p> <p>24 I can.</p> <p>25 MR. MCGUIRE: Okay.</p>
<p>15</p> <p>1 privilege log on them. We can take it up with the</p> <p>2 court on those.</p> <p>3 But on the ones that I'm not fighting</p> <p>4 about, except for the fact that they are copied to</p> <p>5 claims people, I'm happy to produce those if you do not</p> <p>6 consider that to be a waiver of the privilege.</p> <p>7 MR. MCGUIRE: Well, I guess the first</p> <p>8 thing is -- and I'm having difficulty understanding why</p> <p>9 these weren't produced a year or so ago.</p> <p>10 MS. TRAVIS: I have been working through</p> <p>11 and getting -- you know, the -- his -- I have been</p> <p>12 trying, Clint. I mean, there's a lot -- we have</p> <p>13 produced a lot of documents in this case. I have been</p> <p>14 trying to keep up with a whole lot of production and</p> <p>15 get you Chad Nesteby before Chad Nesteby's deposition</p> <p>16 and get you Ty Christian before Ty Christian's</p> <p>17 deposition. And I have been trying to -- I have been</p> <p>18 prioritizing.</p> <p>19 So I'm sorry. It's been a busy caseload.</p> <p>20 You know, three of the cases are with you and so I'm</p> <p>21 doing the best I can. Like I said, if you want to not</p> <p>22 take his deposition today because you want me to</p> <p>23 produce these e-mails before -- I'm not trying to trick</p> <p>24 you. If you want more time, then we will get you more</p> <p>25 time. I've been doing the best I can.</p>	<p>17</p> <p>1 MS. TRAVIS: If you don't want to take</p> <p>2 his deposition today, that's completely fine. I'm not</p> <p>3 fighting you on that at all. You tell me what you want</p> <p>4 to do.</p> <p>5 MR. MCGUIRE: Yeah, I think what I would</p> <p>6 like to do is get the -- all of -- so that we don't</p> <p>7 have to -- I don't want to have to bring Mr. Chapman</p> <p>8 and question him again and then get into a question of</p> <p>9 I already asked this and then come back and ask this.</p> <p>10 I think it would be fairest for everyone</p> <p>11 if we get our hands around everything that is there so</p> <p>12 that I can -- I can question him about those things.</p> <p>13 So I think what -- that I would like to</p> <p>14 pause this deposition and then just reschedule it once</p> <p>15 we get those worked out.</p> <p>16 MS. TRAVIS: I have no problem with that.</p> <p>17 It may, though, Clint, require -- I mean, I'll do a</p> <p>18 privilege log and it may require going to the court on</p> <p>19 some of this.</p> <p>20 And I hear what you're saying about he's</p> <p>21 the decisionmaker in the FRSA case, but you've added</p> <p>22 your FEIA case to this. And so there's -- there's a</p> <p>23 FEIA personal injury investigation of that component.</p> <p>24 So it's -- it's blurrier than it would be if it was</p> <p>25 just an FRSA case.</p>

